

**HOUSE OF COMMONS TRANSPORT SELECT COMMITTEE**  
**INQUIRY INTO THE COST OF MOTOR INSURANCE**



**Written evidence from the Association of Personal Injury Lawyers**

**December 2010**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain the access to justice they need and deserve. Our 4,700 members are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, and governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury
- To promote and develop expertise in the practice of personal injury law
- To promote wider redress for personal injury in the legal system
- To campaign for improvements in personal injury law
- To promote safety and alert the public to hazards wherever they arise

We welcome the opportunity to provide evidence to the Transport Committee on the cost of motor insurance. While noting the terms of reference, our evidence is restricted to issues which reflect the expertise of our members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Lorraine Gwinnutt

Head of Communications

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 938 8707

Email: [lorraine.gwinnutt@apil.org.uk](mailto:lorraine.gwinnutt@apil.org.uk)

## **Introduction and key principles**

1. We understand the driving need both politically and economically to keep expenditure under control. It must be remembered, however, that people who are injured through no fault of their own must retain the right to claim the redress which they need and which is their right.
2. When discussing the cost of personal injury claims, it is common to hear that rising costs are to be laid at the door of the claimant and the claimant lawyer and that the answer is to restrict the availability of independent legal advice and restrict the claimant's damages. This is a very serious proposition for those people who are vulnerable and who need, and have a right, to claim proper redress when they are guilty of nothing except, in the case of this evidence, getting into their vehicles. It is not the role of the injured person to subsidise the insurance industry.
3. This does not mean that there is no room for improvement in the system, and APIL continues with its policy of dialogue and education, and works hard to introduce improvements wherever possible and, more importantly, where such improvements are to the benefit of people injured through no fault of their own.
4. We are concerned about many of the misconceptions which currently abound about the system for claiming compensation in England and Wales, some of which have been presented to the Transport Select Committee, and which we would like to correct in this evidence.

## The cost of needless injury

5. It must be remembered that it is expensive to injure someone, especially if that injury is very serious and leads to a need for future medical care, or adaptations to the home. Even so-called 'small claims' can be incredibly traumatic for those who suffer the injury. Compensation is only available when negligence is proven and, while it may sound trite, the best way to cut costs is obviously to cut the negligence which causes needless injury in the first place.
  
6. Insurers continue to suggest that costs are increasing and are disproportionate to damages recovered. We know from the last UK Bodily Injuries Award Study<sup>[1]</sup> that legal costs as a percentage of total payouts by insurers<sup>[2]</sup> have remained constant at 30 per cent for many years. We also know that damages remain below the levels that the Law Commission suggested they should be at in 1999 when the commission suggested an increase in damages for pain, suffering and loss of amenity. This suggests that costs are probably at about the right level but that, in fact, damages need to increase.
  
7. Where injuries do occur it is imperative, both for the welfare of the injured person and in order to limit legal costs, that claims for compensation are dealt with quickly and efficiently and here the remedy is very much in the insurers' own hands. Research conducted by APIL has shown that defendants (and, therefore, their insurers) indulge in behaviour which inevitably prolongs cases and results in increased costs. In more than 2,000 cases relating to lower value claims which ultimately settled for general damages of £5,000 or less:

---

<sup>[1]</sup> ABI and IUA 4<sup>th</sup> Bodily Injury Awards Study 2007

<sup>[2]</sup> Ibid (damages to costs ratio in private car comprehensive claims)

- the final offer made to a claimant by a defendant's insurer was more than 50 per cent higher than the first offer
  - 63 per cent of defendants' insurers who subsequently admitted liability failed to do so during the so-called 'protocol period' (the first three months of the claim)
  - 73 per cent of cases included an element of complexity
8. The insurance industry has also developed a growing practise of effectively generating claims against itself, and distorting the market in a bid to pay potential claims early in an effort to avoid paying legal costs. Earlier evidence to the committee has included reference to what the Association of British Insurers euphemistically calls 'third party assistance'. What this actually means is that the insurer of the defendant driver approaches the injured person and offers to settle the claim direct. The insurer is, in this instance, its own judge and jury about what compensation is appropriate. APIL has serious concerns about this practice, not least because it is not transparent, nor is it properly regulated, which means injured people, who are usually completely unfamiliar with how compensation should be calculated, are doubly vulnerable. Not all insurers are as scrupulous as they should be about reminding people that they are entitled to independent legal advice. We will never know just how many people are being under-compensated because they are left to deal with their cases direct with insurers, when they have little or no knowledge of how the system works.

9. In addition, by approaching claimants in this way, the insurance companies are 'capturing' claims from people who might never have claimed compensation otherwise. They do this through direct telephone calls, text messages and emails. Contrary to the popular and perpetual myth, there is no 'compensation culture' in this country. People are not queuing up to claim compensation payments. Many people who are approached in this way may not have claimed compensation at all if they had not been approached by the insurer, but it is very difficult for anyone to ignore repeated and persistent offers of compensation. One example has been provided by one of our members in Scotland whose daughter, a student, was involved in a road traffic collision. Although a little shaken and sore after the event, she did not need to see her doctor. She was, however, pursued relentlessly by the insurer of the driver who was at fault in this instance, and who wanted to offer her compensation. In the end her privacy was invaded to such an extent that she accepted the payment which was being forced on her just to prevent the intrusion.

#### **New claims process for road traffic claims under the value of £10,000**

10. The committee has heard evidence already about the new claims process. It was introduced by the previous Government to reduce delay and costs in the system for these types of claims. The new process was developed with the hard work and co-operation of all key stakeholders, including APIL, which sits on the board of stakeholders which manages and governs the process. According to the Ministry of Justice, the new system accommodates 75 per cent of all personal injury claims.

11. It may well be the case that, in time, the new system delivers on the Government's objectives, but to suggest at this stage that there is any firm evidence that it is doing so now is both misleading and premature. The new scheme is only seven months old and has not been properly tried or tested. Only a handful of cases have even reached the final stage of the process. The electronic portal is still beset by quite fundamental teething problems and there are other significant issues to resolve, for example, who owns it, who runs it, who pays for it and who owns the data. It needs to run for at least a year and then be subject to careful review to make sure it's effective before even contemplating any extension of the scheme to other categories of case, as suggested by Lord Young, and has been mentioned in previous evidence.

### **Referral fees**

12. Earlier evidence that referral fees increase the cost of premiums was highly misleading. Referral fees are paid usually by solicitors to claims management companies, if they provide them with cases, or to insurance companies for passing cases on to them. In the latter example, these are usually situations in which the solicitor is part of a panel of law firms retained by the insurer.

13. There are no circumstances of which we are aware which would result in referral fees generating an increase in insurance premiums. As is the case with any marketing activity, a solicitor is not allowed to recover the cost of referral fees from the losing party, but pays the fee from his own account.

14. APIL's only concern in relation to referral fees is, however, the protection of the injured person, and we believe the only way to achieve this is through a combination of regulation (as this is not a properly regulated area) and education.

15. It is vital that consumers are properly protected and that referral fees are transparent. Both proper consumer protection and transparency would be impossible to deliver if referral fees were to be driven back underground, which is what the Legal Services Consumer Panel concludes could be the consequence of a ban or a cap. It is proving equally unrealistic to expect solicitors to police the activities of introducers. What is needed now is robust, joined-up regulation, and a level playing field for all agencies involved. This, together with a culture of openness and transparency, is particularly important with Alternative Business Structures on the horizon, as they will create an even more complex market. The Solicitors Regulation Authority needs to play a more active role in the policing of solicitors' behaviour and, in particular, in ensuring that injured people are aware of the existence of referral fee arrangements from the outset of cases.

## **Fraud**

16. Fraud is clearly a major problem for the insurance industry. Obviously, there is no place for fraudulent claims in the legal system and APIL has actively sought dialogue, and is currently working, with those directly involved in this issue, including the Insurance Fraud Bureau (IFB) and the Forum of Insurance Lawyers (FOIL). We are very keen actively to assist the IFB in its drive to work with stakeholders to reduce fraud and some of the activities we are considering in conjunction with the IFB are a survey of APIL members and exploration of the possibility of helping APIL members improve screening for fraud.



17. While lawyers have to have a degree of good faith in what a client says, investigations and evidence play a large part in determining whether or not a case has merit. We know our members take this issue extremely seriously and are far from complacent about fraud. But we need the insurers and all those who are familiar with fraudulent tactics, to keep us informed about current developments so our members are properly prepared when dealing with their clients.

18. Insurers are obviously entitled to do whatever is necessary, and should certainly fight a case if they believe a case is clearly fraudulent, although claims of fraud should, obviously, be supported with clear evidence.

### **Lord Justice Jackson's recommendations**

19. Lord Justice Jackson's proposals for civil litigation costs have been lauded in earlier evidence as the answer to the insurers' difficulties in relation to the high cost of motor insurance. This is despite the fact that he offers no remedy for the major concerns expressed in relation to fraud, or the propensity for younger drivers to have more bodily injury claims.

20. In fact, Lord Justice Jackson's recommendations will deny access to justice for many of the most seriously injured people, as he is seeking to transfer part of the burden of costs onto the innocent party and he is doing this in a climate in which we know damages are too low in any event. Legal costs should continue to be met by the negligent person who caused the needless injury in the first place, not the innocent victim who was injured through no fault of his own. This "Jackson levy" on seriously injured people is unfair and unjust.